

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NIKE, INC.,

Plaintiff,

v.

BY KIY LLC,
NICKWON ARVINGER,
DAVID WEEKS,
RELOADED MERCH LLC,
BILL OMAR CARRASQUILLO, and
XIAMEN WANDERING PLANET IMPORT
AND EXPORT CO., LTD.

Defendants.

BY KIY, LLC,

Counter-Plaintiff,

v.

NIKE, INC.

Counter-Defendant.

Case No. 1:22-CV-10176-VM

**PLAINTIFF AND COUNTER-
DEFENDANT NIKE, INC.'S
ANSWER TO DEFENDANT AND
COUNTER-PLAINTIFF BY KIY,
LLC'S COUNTERCLAIM**

Kiy is not a “cutting-edge design house.” There is nothing creative or “cutting-edge” about stealing Nike’s designs and replacing the Swoosh with Kiy’s logo. Rather, Kiy is a serial copyist who has profited from its intentional theft of some of Nike’s most iconic silhouettes. Kiy’s counterclaim, littered with incorrect and irrelevant allegations, is nothing more than an attempt to distract from Kiy’s own willful infringement.

Plaintiff and Counter-Defendant Nike, Inc. (“Nike”) answers the Counterclaim of Defendant and Counter-Plaintiff By Kiy, LLC (“Kiy”) [Dkt. 53] as follows:

1. Nike denies the allegations in Paragraph 1.
2. Nike denies the allegations in Paragraph 2.
3. Nike admits a copy of the Trademark Registration certificate for U.S. Trademark Registration No. 6,932,389 is attached as Exhibit A to the counterclaim. Nike denies the remaining allegations in Paragraph 3.
4. Nike denies the allegations in Paragraph 4.
5. Nike denies the allegations in Paragraph 5.
6. Nike denies the allegations in Paragraph 6.
7. Nike denies the allegations in Paragraph 7.
8. Nike denies the allegations in Paragraph 8.
9. Nike denies the allegations in Paragraph 9.
10. Nike denies the allegations in Paragraph 10.
11. Nike denies the allegations in Paragraph 11.
12. Nike admits its trademark rights in its Swoosh logo are valid. Nike denies the remaining allegations in Paragraph 12.
13. Nike admits it sells shoes marked with a Swoosh and it has rigorous standards for use of the Swoosh. Nike denies the remaining allegations in Paragraph 13.

14. Nike denies the allegations in Paragraph 14.

15. Nike denies the allegations in Paragraph 15.

16. Nike denies the allegations in Paragraph 16.

17. Nike admits this Court has subject matter jurisdiction over Kiy's counterclaim. Nike denies Kiy is entitled to any of the relief it seeks in its counterclaim. Nike denies the remaining allegations in Paragraph 17.

18. Nike admits it is subject to personal jurisdiction in this District in this case. Nike admits it does business in the State of New York and in this District. Nike denies the remaining allegations in Paragraph 18.

19. Nike admits venue is proper in this Court in this case. Nike admits it conducts business in this District. Nike denies the remaining allegations in Paragraph 19.

20. Nike admits the allegations in Paragraph 20.

21. Nike admits the allegations in Paragraph 21.

22. Nike admits Kiy's counterclaim seeks a declaratory judgment that Nike's U.S. Trademark Reg. Nos. 3,711,305; 3,721,064; 6,368,694; and 6,368,691 (collectively, the "Asserted Marks") are invalid and unenforceable. Nike denies Kiy is entitled to any of the relief it seeks in its counterclaim. Nike denies the remaining allegations in Paragraph 22.

23. Nike admits the allegations in Paragraph 23.

24. Nike admits the allegations in Paragraph 24.

25. Nike denies that "[sic]" appears in the description of mark for the '305 Registration. Nike admits the remaining allegations in Paragraph 25.

26. Nike denies the allegations in Paragraph 26.

27. Nike admits color is not claimed as a feature of the mark in U.S. Trademark Registration No. 3,711,305. Nike denies the remaining allegations in Paragraph 27.

28. Nike denies the allegations in Paragraph 28.

29. Nike admits the allegations in Paragraph 29.

30. Nike denies that “[sic]” appears in the description of the mark for the ’064 Registration. . Nike admits the remaining allegations in Paragraph 30.

31. Nike denies it only recently filed U.S. Trademark Application No. 90/086,080. Nike admits the remaining allegations in Paragraph 31.

32. Nike denies that “[sic]” appears in the description of the mark for the ’694 Registration. Nike admits the remaining allegations in Paragraph 32.

33. Nike denies the allegations in Paragraph 33.

34. Nike admits color is not claimed as a feature of the mark in U.S. Trademark Reg. No. 6,368,694. Nike denies the remaining allegations in Paragraph 34.

35. Nike denies it only recently filed U.S. Trademark Application No. 90/085,898. Nike admits the remaining allegations in Paragraph 35.

36. Nike admits the allegations in Paragraph 36.

37. Nike denies the allegations in Paragraph 37.

38. Nike denies the allegations in Paragraph 38.

39. Nike denies the allegations in Paragraph 39.

40. Nike denies the allegations in Paragraph 40.

41. Nike denies the allegations in Paragraph 41.

42. Nike denies the allegations in Paragraph 42.

43. Nike admits it submitted declarations during the prosecution of the ’305 and ’064 Registrations from Kelly Hibler. Nike denies the remaining allegations in Paragraph 43.

44. Nike admits Paragraph 44 contains an excerpt from the Declaration of Kelly Hibler in support of U.S. Trademark Application No. 77/621,665. Nike denies the remaining allegations in Paragraph 44.

45. Nike denies the allegations in Paragraph 45.

46. Nike denies the allegations in Paragraph 46.

47. Nike denies the allegations in Paragraph 47.

48. Nike denies the allegations in Paragraph 48.

49. Nike denies the allegations in Paragraph 49.

50. Nike denies the allegations in Paragraph 50.

51. Nike denies the allegations in Paragraph 51.

52. Nike denies the allegations in Paragraph 52.

53. Nike denies the allegations in Paragraph 53.

54. Nike denies the allegations in Paragraph 54.

55. Nike denies the allegations in Paragraph 55.

56. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56, and on that basis, denies the allegations in Paragraph 56.

57. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57, and on that basis, denies the allegations in Paragraph 57.

58. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58, and on that basis, denies the allegations in Paragraph 58.

59. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59, and on that basis, denies the allegations in Paragraph 59.

60. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60, and on that basis, denies the allegations in Paragraph 60.

61. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61, and on that basis, denies the allegations in Paragraph 61.

62. Nike denies the allegations in Paragraph 62.

63. Nike denies the allegations in Paragraph 63.

64. Nike denies the allegations in Paragraph 64.

65. Nike denies the allegations in Paragraph 65.

66. Nike denies the allegations in Paragraph 66.

67. Nike denies the allegations in Paragraph 67.

68. Nike denies the allegations in Paragraph 68.

69. Nike denies the allegations in Paragraph 69.

70. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70, and on that basis, denies the allegations in Paragraph 70.

71. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71, and on that basis, denies the allegations in Paragraph 71.

72. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72, and on that basis, denies the allegations in Paragraph 72.

73. Nike is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73, and on that basis, denies the allegations in Paragraph 73.

74. Nike denies the allegations in Paragraph 74.

75. Nike denies the allegations in Paragraph 75.

76. Nike denies the allegations in Paragraph 76.

77. Nike denies the allegations in Paragraph 77.

78. Nike denies the allegations in Paragraph 78.

79. Nike denies the allegations in Paragraph 79.

80. Nike denies the allegations in Paragraph 80.

81. Nike denies the allegations in Paragraph 81.

82. Nike admits it has not asserted the '694 Registration against the Amiri Skel High Top sneaker referenced in Paragraph 82. Nike denies the remaining allegations in Paragraph 82.

83. Nike denies the allegations in Paragraph 83.

84. Nike admits it has not asserted the '694 Registration against the Rhude Rhexcess Hi sneaker referenced in Paragraph 84. Nike denies the remaining allegations in Paragraph 84.

85. Nike denies the allegations in Paragraph 85.

86. Nike denies the allegations in Paragraph 86.

87. Nike admits it has not asserted the '694 Registration against the Golden Goose Sky Star sneaker referenced in Paragraph 87. Nike denies the remaining allegations in Paragraph 87.

88. Nike denies the allegations in Paragraph 88.

89. Nike admits BAPE sells multiple sneaker silhouettes that are near verbatim copies of Nike's sneaker silhouettes covered by Nike's trademark registrations. Nike denies the remaining allegations in Paragraph 89.

90. Nike admits it filed suit against USAPE LLC ("BAPE") on January 25, 2023, alleging trade dress infringement. Nike denies the remaining allegations in Paragraph 90.

91. Nike denies the allegations in Paragraph 91.

92. Nike denies the allegations in Paragraph 92.

93. Nike admits it has sold models of the Air Jordan 1 sneakers, some of which do not contain each and every element of the claimed trade dress elements of the Asserted Marks. Nike denies the remaining allegations in Paragraph 93.

94. Nike denies the allegations in Paragraph 94.

95. Nike denies the allegations in Paragraph 95.

96. Nike admits it filed the trade dress applications identified in Exhibit I. Nike denies the remaining allegations in Paragraph 96.

97. Nike incorporates by reference each of its answers to Paragraphs 1 through 96 as if fully set forth herein.

98. Nike admits Kiy seeks a declaratory judgment under the Trademark Laws of the United States, 15 USC § 1051 et seq., the Lanham Act, 15 U.S.C. §1125, et seq., the Patent Act of 1952, as amended, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Nike denies Kiy is entitled to the relief it seeks.

99. Nike denies the allegations in Paragraph 99.

100. Nike denies the allegations in Paragraph 100.

101. Nike denies the allegations in Paragraph 101.

102. Nike denies the allegations in Paragraph 102.

103. Nike denies the allegations in Paragraph 103.

104. Nike denies the allegations in Paragraph 104.

105. Nike denies the allegations in Paragraph 105.

106. Nike incorporates by reference each of its answers to Paragraphs 1 through 105 as if fully set forth herein.

107. Nike admits Kiy seeks a declaratory judgment under the Trademark Laws of the United States, 15 USC § 1051 et seq., the Lanham Act, 15 U.S.C. §1125, et seq., the Patent Act of 1952, as amended, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Nike denies Kiy is entitled to the relief it seeks.

108. Nike denies the allegations in Paragraph 108.

109. Nike denies the allegations in Paragraph 109.

110. Nike denies the allegations in Paragraph 110.

111. Nike denies the allegations in Paragraph 111.

112. Nike denies the allegations in Paragraph 112.

113. Nike denies the allegations in Paragraph 113.

114. Nike incorporates by reference each of its answers to Paragraphs 1 through 113 as if fully set forth herein.

115. Nike admits Kiy seeks a declaratory judgment under the Trademark Laws of the United States, 15 USC § 1051 et seq., the Lanham Act, 15 U.S.C. §1125, et seq., the Patent Act of 1952, as amended, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Nike denies Kiy is entitled to the relief it seeks.

116. Nike denies the allegations in Paragraph 116.

117. Nike denies the allegations in Paragraph 117.

118. Nike denies the allegations in Paragraph 118.

119. Nike denies the allegations in Paragraph 119.

120. Nike denies the allegations in Paragraph 120.

121. Nike denies the allegations in Paragraph 121.

122. Nike denies the allegations in Paragraph 122.

123. Nike incorporates by reference each of its answers to Paragraphs 1 through 122 as if fully set forth herein.

124. Nike admits Kiy seeks a declaratory judgment under the Trademark Laws of the United States, 15 USC § 1051 et seq., the Lanham Act, 15 U.S.C. §1125, et seq., the Patent Act of 1952, as amended, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Nike denies Kiy is entitled to the relief it seeks.

125. Nike denies the allegations in Paragraph 125.

126. Nike denies the allegations in Paragraph 126.

- 127. Nike denies the allegations in Paragraph 127.
- 128. Nike denies the allegations in Paragraph 128.
- 129. Nike denies the allegations in Paragraph 129.
- 130. Nike denies the allegations in Paragraph 130.
- 131. Nike denies the allegations in Paragraph 131.
- 132. Nike denies Kiy is entitled to the relief it requests in Paragraph 132.
- 133. Nike denies Kiy is entitled to the relief it requests in Paragraph 133.
- 134. Nike denies Kiy is entitled to the relief it requests in Paragraph 134.
- 135. Nike denies Kiy is entitled to the relief it requests in Paragraph 135.

AFFIRMATIVE DEFENSE

Each counterclaim fails to state facts sufficient to constitute a claim or cause of action upon which relief may be granted.

PRAYER FOR RELIEF

WHEREFORE, Nike prays for judgment against Kiy and requests that the Court: (1) dismiss Kiy's counterclaim in its entirety, with prejudice; (2) enter judgment in favor of Nike; and (3) award Nike the relief sought in its Complaint against Kiy [Dkt. 1].

Dated: March 6, 2023

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